

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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C.M., individually and as parent to D.M., et al.,
Plaintiff(s),
v.
JESUS JARA, et al.,
Defendant(s).

Case No. 2:20-CV-1562 JCM (BNW)

ORDER

Presently before the court is defendant Clark County School District's ("CCSD") motion for judgment on the pleadings. (ECF No. 138). Plaintiffs C.M., B.C., L.C., D.C., C.S., and L.K., on behalf of themselves and all others similarly situated (collectively "plaintiffs"), filed a response (ECF No. 143), to which CCSD replied. (ECF No. 144).

Also before the court is CCSD's motion for summary judgment. (ECF No. 140). Plaintiffs filed a response (ECF No. 145), to which CCSD replied. (ECF No. 148).

I. Background

This is a class action discrimination case under the Americans with Disabilities Act ("ADA"). The named plaintiffs are six parents and their respective minor students. (ECF No. 43). The surviving claim in plaintiffs' second amended complaint ("SAC") alleges that CCSD violated the ADA through its discriminatory practices by failing to accommodate students with disabilities, and "[excluded] plaintiffs from participating in and receiving the benefits of a public-school education." (*Id.* at 14).

1 The following facts are undisputed. On March 12, 2020, the governor of Nevada
 2 declared a state of emergency at the start of the COVID-19 pandemic. (ECF No. 140, at 3). On
 3 March 21, 2020, the United States Department of Education released a report stating that
 4 “ensuring compliance with [...] Title II of the [ADA] should not prevent any school from
 5 offering educational programs through distance instruction.” (*Id.* at 4-5).
 6

7 On June 9, 2020, the governor mandated that distance learning be made available to all
 8 students in Nevada. (*Id.* at 4). CCSD opted to reopen public schools only “in a digital format.”
 9 (*Id.* at 7). All students in CCSD, regardless of any disability, were subject to the same distance
 10 learning program. (*Id.* at 9).
 11

12 **II. Motion for Summary Judgment**

13 A. Legal Standard

14 The Federal Rules of Civil Procedure allow summary judgment when the pleadings,
 15 depositions, answers to interrogatories, and admissions on file, together with the affidavits (if
 16 any), show that “there is no genuine dispute as to any material fact and the movant is entitled to
 17 judgment as a matter of law.” Fed. R. Civ. P. 56(a). Information may be considered at the
 18 summary judgment stage if it would be admissible at trial. *Fraser v. Goodale*, 342 F.3d 1032,
 19 1036 (9th Cir. 2003) (citing *Block v. Los Angeles*, 253 F.3d 410, 418–19 (9th Cir. 2001)). A
 20 principal purpose of summary judgment is “to isolate and dispose of factually unsupported
 21 claims.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986).
 22
 23

24 In judging evidence at the summary judgment stage, the court does not make credibility
 25 determinations or weigh conflicting evidence. Rather, it draws all inferences in the light most
 26 favorable to the nonmoving party. *See T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809
 27 F.2d 626, 630–31 (9th Cir.1987).
 28

1 When the non-moving party bears the burden of proof at trial, the moving party can meet
2 its burden on summary judgment in two ways: (1) by presenting evidence to negate an essential
3 element of the non-moving party's case; or (2) by demonstrating that the non-moving party
4 failed to make a showing sufficient to establish an element essential to that party's case on which
5 that party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323–24. If the
6 moving party fails to meet its initial burden, summary judgment must be denied, and the court
7 need not consider the non-moving party's evidence. *See Adickes v. S.H. Kress & Co.*, 398 U.S.
8 144, 159–60 (1970).

10 If the moving party satisfies its initial burden, the burden then shifts to the opposing party
11 to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v. Zenith*
12 *Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute, the
13 opposing party need not establish a material issue of fact conclusively in its favor. It is sufficient
14 that “the claimed factual dispute be shown to require a jury or judge to resolve the parties’
15 differing versions of the truth at trial.” *T.W. Elec. Serv., Inc.*, 809 F.2d at 630.

17 However, the nonmoving party cannot avoid summary judgment by relying solely on
18 conclusory allegations that are unsupported by factual data. *See Taylor v. List*, 880 F.2d 1040,
19 1045 (9th Cir. 1989). Instead, the opposition must go beyond the assertions and allegations of
20 the pleadings and set forth specific facts by producing competent evidence that shows a genuine
21 issue for trial. *See Celotex*, 477 U.S. at 324. If the nonmoving party's evidence is merely
22 colorable or is not significantly probative, summary judgment may be granted. *Anderson v.*
23 *Liberty Lobby, Inc.*, 477 U.S. 242, 249–50 (1986).

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1 B. Discussion

2 As an initial matter, plaintiffs argue that the court should grant a continuance of the
3 summary judgment motion. (ECF No. 145, at 16). Plaintiffs contend that they have been unable
4 “to conduct the deposition of CCSD’s person most knowledgeable on the issues of CCSD’s
5 decision making regarding its policy in response to COVID-19 mandates and/or
6 recommendations.” (*Id.*).

7 The court does not find it necessary for plaintiffs to conduct additional discovery and
8 therefore denies their request. Plaintiffs have failed to show that the sought-after facts are
9 essential to resist summary judgment. *See State of Cal., on Behalf of California Dep’t of Toxic*
10 *Substances Control v. Campbell*, 138 F.3d 772, 779 (9th Cir. 1998).

11 1. Plaintiffs’ Title II Claim

12 Plaintiffs’ remaining claim alleges that CCSD violated Title II of the ADA through its
13 discriminatory practices. (ECF No. 43, at 14).

14 Title II of the ADA states that “[n]o qualified individual with a disability shall, by reason
15 of such disability, be excluded from participation in or be denied the benefits of the services,
16 programs, or activities of a public entity, or be subjected to discrimination by any such entity.”
17 42 U.S.C. § 12132.

18 To prevail on a Title II claim, “the plaintiff must show that, (1) he is a qualified
19 individual with a disability; (2) he was either excluded from participation in or denied the
20 benefits of a public entity's services, programs, or activities, or was otherwise discriminated
21 against by the public entity; and (3) this exclusion, denial, or discrimination was by reason of his
22 disability.” *Cohen v. City of Culver City*, 754 F.3d 690, 695 (9th Cir. 2014) (quoting *Weinreich*
23 *v. L.A. Cnty. Metro. Transp. Auth.*, 114 F.3d 976, 978 (9th Cir. 1997)).
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1 “To show that the discrimination was ‘by reason of’ the plaintiff’s disability, the plaintiff
 2 must show that the action would not have been taken ‘but for’ the disability.” *Sabatini v.*
 3 *Nevada State Bd. of Nursing*, 2023 WL 4963770, at *3 (D. Nev. Aug. 2, 2023) (quoting *Uhuru v.*
 4 *Bonnifield*, 2021 WL 3870479, at *9 (C.D. Cal. June 21, 2021)).

5
 6 “A disability discrimination claim may be based on ‘one of three theories of liability:
 7 disparate treatment, disparate impact, or failure to make a reasonable accommodation.’” *Payan*
 8 *v. L.A. Cmty. College Dist.*, 11 F.4th 729, 738 (9th Cir. 2021) (quoting *Davis v. Shah*, 821 F.3d
 9 231, 260 (2d Cir. 2016)).

10
 11 CCSD has met its burden of proving that plaintiffs have failed to make a showing
 12 sufficient to establish the third element of a Title II claim. *See Celotex Corp.*, 477 U.S. at 323–
 13 24; *see Chandler*, 83 F.3d at 1155. Moreover, plaintiffs have failed to establish that a genuine
 14 issue of material fact exists.

15
 16 *a. Title II’s “by reason of” requirement*

17 To establish the third element of a Title II claim, plaintiffs argue that their interrogatory
 18 responses to CCSD stated that requests were made for accommodations or guidance, but CCSD
 19 refused to provide answers. (ECF No. 145, at 12). Plaintiffs also provide a 361-page declaration
 20 that was offered in support of their motion for temporary restraining order and preliminary
 21 injunction. (*Id.*).

22
 23 CCSD points out that plaintiffs submitted 425 pages of exhibits in response to CCSD’s
 24 motion. (ECF No. 145). Plaintiffs attempt to use these exhibits to show that there exists; a
 25 genuine issue of material fact yet they did not bother to provide the court with any specific pages
 26 where it could find their contentions.

1 Ten years later, this court reminds parties before it that “judges are not like pigs, hunting
2 for truffles in briefs. Nor are they archaeologists searching for treasure. Put simply, the Court is
3 not obligated to paw over files . . . in order to make a party's claim.” *Krause v. Nevada Mut. Ins.*
4 *Co.*, 2014 WL 99178, at *2 (D. Nev. Jan. 3, 2014) (quoting *Romero v. Nevada Dept. of*
5 *Corrections*, 2013 WL 6206705 at *11 n.15 (D. Nev. Nov. 27, 2014)).

7 Thus, the court will not paw over 425 pages to make plaintiffs’ Title II claim. Even
8 without hunting for answers in the 425 pages submitted, the court cannot determine how
9 plaintiffs’ 361-page declaration and interrogatory responses show that CCSD’s alleged
10 exclusion, denial, or discrimination was by reason of plaintiffs’ disabilities.

12 The court is unable to draw a single inference in light most favorable to plaintiffs that
13 would allow a jury to conclude that CCSD’s exclusion, denial, or discrimination was by reason
14 plaintiffs’ disabilities. *See T.W. Elec. Serv., Inc.*, 809 F.2d at 630–31.

15 *b. Disparate treatment, reasonable accommodation, and disparate impact*

16 The court now addresses each theory of liability under *Payan* to determine whether any
17 theory supports plaintiffs’ claim.

19 Under a disparate treatment theory, plaintiffs must show that other non-disabled students,
20 without plaintiffs’ disabilities, were treated more favorably. *Atayde v. Napa State Hosp.*, 255 F.
21 Supp. 3d 978, 1001 (E.D. Cal. 2017) (citing *McGary v. City of Portland*, 386 F.3d 1259, 1264
22 (9th Cir. 2004)).

24 To succeed on a failure-to-accommodate claim, plaintiffs must show that CCSD failed to
25 make reasonable modifications that would have accommodated their disabilities, without
26 fundamentally altering the nature of the program or activity, and the accommodation would have
27

1 enabled the plaintiff to meet the program's essential eligibility requirements. *See A.G. v.*
2 *Paradise Valley Unified Sch. Dist. No. 69*, 815 F.3d 1195, 1206 (9th Cir. 2016).

3 Plaintiffs' only argument to establish a disparate treatment and reasonable
4 accommodation theory of liability relies on the 425 pages of exhibits already addressed by the
5 court. Plaintiffs have not provided the court with any specific pages supporting their argument.
6 However, the court is not obligated to sift through 425 pages to make plaintiffs' claim.
7

8 Still, it is unclear how plaintiffs' purported evidence establishes a theory of disparate
9 treatment. It is undisputed that all students participated in distance learning. (ECF No. 140, at
10 9). A reasonable jury could not conclude that other non-disabled students were treated more
11 favorably than plaintiffs. *See Atayde*, 255 F. Supp. 3d at 1001.
12

13 Next, plaintiffs have failed to establish a failure-to-accommodate theory of liability.
14 Plaintiffs, in conclusory fashion, contend that they communicated or attempted to communicate
15 with CCSD staff to request reasonable accommodations. (ECF No. 145, at 13). Plaintiffs have
16 not set forth evidence that would allow a reasonable jury to conclude that an alleged reasonable
17 modification would have accommodated their alleged disabilities.
18

19 Further, considering the COVID-19 pandemic, a reasonable jury would be unable to
20 conclude that the accommodations would not have fundamentally altered the nature of schooling
21 in CCSD. *See A.G.*, 815 F.3d at 1206.
22

23 "To assert a disparate impact claim, a plaintiff must allege that a facially neutral
24 government policy or practice has the 'effect of denying meaningful access to public services' to
25 people with disabilities." *Payan*, 11 F. 4th at 738.

26 Plaintiffs' opposition to the motion offers one conclusory statement to negate CCSD's
27 argument. Plaintiffs state that their "SAC sufficiently alleges a theory of disparate impact [and]
28

1 [i]t is undisputed that all CCSD students were subject to the same distance learning program.
2 (ECF No. 145, at 14).

3 CCSD is correct in stating that the SAC itself does not allege a theory of disparate impact
4 (ECF No. 148, at 6); however, even if it did, plaintiffs' argument that all students were subject to
5 distance learning does not support a disparate impact theory of liability.
6

7 In fact, their argument supports quite the opposite. All students were subject to the same
8 learning program; plaintiffs, like other students had access to schooling in CCSD. Thus,
9 plaintiffs' conclusory allegation does not allow a reasonable jury to conclude that a theory of
10 disparate impact supports their Title II claim.
11

12 *c. Intentional discrimination*

13 Finally, to recover monetary damages under a Title II claim, plaintiffs must show that
14 CCSD acted with intentional discrimination. *See Cohen*, 754 F.3d at 695, n.6. Plaintiffs must
15 prove that CCSD "acted with deliberate indifference, meaning that it knew that harm to a
16 federally protected right was substantially likely and failed to act upon that knowledge." *Id.*
17

18 Plaintiffs only argument to establish a genuine issue of material fact points to the 425
19 pages of exhibits. Once more, it is unclear how such evidence would allow a jury to establish
20 that CCSD acted with intentional discrimination.

21 Plaintiffs have failed to show any causal link between CCSD's alleged exclusion, denial,
22 or discrimination and plaintiffs' disabilities, and they cannot establish any theory of liability
23 under *Payan*.
24

25 A reasonable jury could not conclude that CCSD's alleged discriminatory actions were
26 by reason of plaintiffs' disabilities. Thus, no genuine issue of material fact exists as to plaintiffs
27 sole remaining claim.
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